



Kansas Motor Carriers Association

Trucking Solutions Since 1936

Legislative Testimony

Presented by the Kansas Motor Carriers Association

Before the Senate Commerce Committee

Senator Karin Brownlee, Co-Chairman

Senator Nick Jordan, Co-Chairman

Tuesday, February 13, 2007

CHAIRMAN BROWNLEE, CHAIRMAN JORDAN AND MEMBERS OF THE SENATE COMMERCE COMMITTEE:

Mike Miller
Miller Trucking, LTD
President

Calvin Koehn
Circle K Transport, Inc.
Chairman of the Board

Michael Topp
TT&T Towing, Inc.
First Vice President

Larry Dinkel
Mitten Trucking, Inc.
Second Vice President

Greg Orscheln
Midwest Express Corp.
Treasurer

Larry "Doc" Criqui
Kansas Van & Storage
Criqui Corp.
Corporate Secretary

Jerry Arensdorf
Arensdorf Trucking, Inc.
ATA State Vice President

Ken Leicht
Rawhide Trucking, Inc.
ATA Alternate State VP

Mike Ross
Ross Truck Line of Salina, Inc.
ProTruck PAC Chairman

Kelly Kile
Wal-Mart Stores, Inc.
Public Relations Chairman

Dave Eaton
Cummins Central Power, LLC
Allied Industries Chairman

Tony Gaston
Rawhide Trucking
Foundation Chairman

Tom Whitaker
Executive Director

I am Tom Whitaker, executive director of the Kansas Motor Carriers Association. I appear here this morning representing our 1,200 member-firms in support of Senate Bill No. 235. This legislation clarifies that an owner-operator leased to a licensed motor carrier is not considered an employee under the provisions of the Employment Security Act.

For more than 60 years, motor carriers have used independent owner-operators of trucks to supplement their fleets and this provides a source of revenue for these independent businesses. An owner-operator is an individual who owns and operates a truck and chooses to lease to a licensed motor carrier in return for a percentage of the revenue generated by the truck. These owner-operators are independent contractors.

During the 2006 Session of the Kansas Legislature, KMCA successfully sought passage of House Bill No. 2755 which spelled out in the statutes that a motor carrier complying with the safety rules and regulations of the Federal Motor Carriers Safety Administration was not considered as having control over an owner-operator and therefore did not constitute an employer/employee relationship. The 2006 legislation was in response to rulings by the Kansas Department of Labor that threatened the long standing practice of using owner-operators. KMCA thought the adoption of HB 2755 would solve the problem however, cases continue to come before the Department of Labor.

KMCA continues to discuss this issue with the Department of Labor in an effort to solve this situation. We would like to publicly thank Secretary Garner for the openness his office has afforded the trucking industry. On Thursday, February 8, 2007, Secretary Garner brought this issue before the Employment Security Council for discussion. The Council voted to table discussion of SB 235 until their next meeting when more information was available, taking no action either for or against the bill. KMCA continues to discuss this issue with the Department, but feels it is imperative to keep moving this legislation forward in order to provide our carrier with sound business judgment when leasing owner-operators.

SB 235 narrowly defines that a motor carrier/owner-operator relationship is not an employer/employee relationship and continues the decades long practice of the trucking industry. According to the Federal Motor Carrier Safety Administration, there are 8,981

Legislative Testimony
Presented by the Kansas Motor Carriers Association
Tuesday, February 13, 2007
Page 2

motor carriers in Kansas and of these, 86% operate six or fewer trucks, 95% operate 19 or fewer trucks and only .5% operate more than 100 trucks. It is estimated that 80% of these carriers use owner-operators and this is especially true for those that serve the agricultural industry. The state's trucking industry needs stable ground rules to continue to provide the service necessary to keep the Kansas economy growing.

Nebraska, Missouri and Oklahoma currently have an exception for owner-operators in state law. Passage of Senate Bill No.235 would provide Kansas motor carriers a level playing field to compete for owner-operators to move the nation's goods.

We would request one amendment to SB 235. On Page 13, line 4, delete the words "any individual who is" and insert "service performed by." This amendment will make the amendment consistent with other paragraphs in K.S.A. 44-703.

The Kansas Motor Carriers Association respectfully requests the Senate Commerce Committee report Senate Bill No. 235 favorable for passage. We thank you for the opportunity to appear before you today. I would be pleased to stand for questions.